

NEWSLETTER – 1st QUARTER 2022

Dear all,

We are happy to send you the 1st quarter 2022 edition of our employment law newsletter for France. Even though the Covid-19 crisis is still not over, the impact on applicable legislation has significantly decreased. You will find below some noteworthy information.

We have also included a summary of legislation passed during the 1st quarter 2022 as well as case law on issues we know to be crucial for your business.

Do not hesitate to contact us if you have any questions on any of these topics.

Best regards,

The MGG Voltaire Team

I. COVID-19-RELATED INFORMATION

You will find below a summary of relevant information on the Covid-19 related legislation that may be useful to your business in France.

State of emergency period	The state of emergency period ended on <u>1st June 2021</u> . A Statute of 10 November 2021 however sets measures to exit the health crisis. Up until 31 st July 2022, the Prime Minister is authorized to impose travel restrictions, limit the opening of public places, etc.
Lockdown / Curfew	No lockdown or curfew is in place.
Vaccine pass	As from January 24 th , 2022, France has implemented a vaccine pass (replacing the health pass previously in place). Individuals aged 16 and over must present a vaccine certificate to access public places or events (restaurants, movie theaters, concerts, museums). In addition to employees of the health sector, employees of those public places or events must now present such vaccine pass to perform their duties.

	<p>A <u>valid</u> vaccine pass means:</p> <ul style="list-style-type: none"> ⇒ A certificate of full vaccination ⇒ Results of a positive PCR or antigenic test of more than 11 days and less than 6 months ⇒ A certificate of contraindication to vaccination.
Official health protocol	<p>The official health protocol was last updated on January 25, 2022. The main rules are as follows:</p> <ul style="list-style-type: none"> ⇒ Remote work is mandatory for all eligible positions for at least 3 days per week until <u>February 1st, 2022</u>. As from February 2nd, hybrid work is recommended but not mandatory. ⇒ Only surgical or category 1 masks may be used at work, excluding other types of masks. FFP2 masks are only mandatory for healthcare professionals. <p>Employees working alone in an office do not have to wear a mask.</p> <ul style="list-style-type: none"> ⇒ A distance of 1 meter between each employee must be respected and must be extended to 2 meters if no mask can be worn. ⇒ Rooms must be regularly ventilated (for 10 minutes each hour). <p>The full version of the health protocol can be found online: https://travail-emploi.gouv.fr/IMG/pdf/protocole-nationale-sante-securite-en-entreprise.pdf</p>

Do not hesitate to ask us if you have any further questions concerning Covid-19 related measures, especially furlough.

II. EMPLOYMENT LAW

Here we summarise some statutes and case law which may prove relevant for your activity.

<p>Discrimination</p>	<p>A dismissal for the employee's refusal to change their place of work based on religious beliefs is not necessarily discriminatory.</p> <p>In this case, a mobility clause had been agreed upon in the employment contract and enforced by the company to impose modification of the place of work. After refusing a first modification, the company assigned the employee to the cleaning of a cemetery.</p> <p>The employee refused this change based on his Hindu beliefs. He was then dismissed for refusing to perform his duties.</p> <p>The Court of Appeal ruled that the dismissal was null and void as it was based on discriminatory characteristics.</p> <p>The French Supreme Court overruled this decision considering that:</p> <ul style="list-style-type: none"> • The imposed change was justified by reason of the nature of the particular occupational activities concerned; • The implementation of such change was proportionate to the aim which was to maintain the employment relationship. <p>The discrimination claim was thus dismissed and the dismissal considered as fair.</p> <p>French Supreme Court, 19 January 2022, n°20-14014</p> <p>https://www.legifrance.gouv.fr/juri/id/JURITEXT000045067718?init=true&page=1&query=20-14.014+&searchField=ALL&tab_selection=all</p> <p><i>Do you want to know more about discrimination in France? Attend our webinar which will be scheduled in 2022</i></p>
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<p>Whistleblower protection</p>	<p>According to French law, an employee may not be dismissed for having reported or testified, in good faith, to facts of which they had knowledge in the performance of their duties and which would be likely to constitute a criminal offence as well as a breach of a legal or regulatory ethical obligation.</p> <p>The employee cannot be deemed to have reported the situation in <u>bad faith</u> only because of the context in which it occurs (conflict with the employer). The Court has to evidence that the employee knew they were misrepresenting the facts.</p> <p>The fact that the alert was given after the employee was notified of grievances concerning their work can thus not <i>per se</i> characterize bad faith.</p> <p>French Supreme Court, 19 January 2022</p> <p>https://www.courdecassation.fr/decision/61e7b7dda41da869de68a27b?judilibre_chambre%5b%5d=soc&previousdecisionpage=0&previousdecisionindex=6&nextdecisionpage=0&nextdecisionindex=8</p> <p>It is noteworthy that an EU Directive 2019/1937 dated October 23, 2019 has reinforced the protection of whistleblowers (mainly by opening new channels of disclosure of their alert and broadening the scope of the protection). A legislative process is currently ongoing in France in order to transpose this Directive and should result in a new Law within the next couple of months.</p> <p><i>Do you want to know more about the obligations of the employer concerning whistleblower protection? Attend our webinar which will be scheduled after publication of the new French Law on whistleblowing.</i></p>
<p>Top-management status</p>	<p>Under Article L.3111-2 of the French Labour Code, a top-manager (“<i>cadre dirigeant</i>”) is an executive employee who is entrusted with responsibilities which imply a high degree of independence in the organization of their time, who is empowered to make decisions in a largely autonomous manner and who receives one of the highest salaries in their company or establishment.</p> <p>Those top-managers do benefit from the Labour Code provisions concerning working time.</p> <p>In this decision, the French Supreme Court outlines that to be characterized as a top-manager all criteria listed in the Labour Code must be met, especially the possibility for the executive to take decisions autonomously in the name of the company.</p>

	<p>Failing this, the executive does not meet the conditions to be a top-manager and would thus be deemed to be working under a 35 hours-per-week scheme, despite the provisions of their employment contract.</p> <p>French Supreme Court, 1 December 2021, n°19-26264</p> <p>https://www.legifrance.gouv.fr/juri/id/JURITEXT000044441049?init=true&page=1&query=19-26.264&searchField=ALL&tab_selection=all</p>
Statute of limitations	<p>Misconduct must be sanctioned within 2 months of the employer's knowledge.</p> <p>In two recent cases, the French Supreme Court gave clarifications on the starting point of this 2-month deadline:</p> <p>⇒ In case of an internal investigation, the employer is deemed to have knowledge of the misconduct only upon communication of the investigation's report.</p> <p>⇒ If the fraud relating to the reimbursement of business expenses is discovered later during an internal investigation, the misconduct is not time-barred.</p> <p>French Supreme Court, 8 December 2021, n°20-15-798 / n°20-15622</p> <p>https://www.legifrance.gouv.fr/juri/id/JURITEXT000044482910?init=true&page=1&query=20-15.798+&searchField=ALL&tab_selection=all</p> <p>https://www.legifrance.gouv.fr/juri/id/JURITEXT000044482909?init=true&page=1&query=20-15.622&searchField=ALL&tab_selection=all</p>
Disabled employees	<p>If an employer has at least 20 employees, 6% of the employees must be disabled people.</p> <p>Each year, the employer must notify the French administration of the positions occupied by a disabled worker to justify that it complies with its obligations. If the employer does not comply with this requirement, it must pay an <u>annual contribution</u>.</p>

	<p>On January 26, 2022, the URSSAF (French social security administration) announced that the annual declaration regarding employment of disabled workers, war veterans and other concerned employees ("OETH") as well as the payment of the contribution for the previous year would henceforth have to be made with the declaration ("DSN") of April (due on May 5 or 15).</p> <p>https://www.urssaf.fr/portail/home/actualites/toute-lactualite-employeur/report-de-lexigibilite-de-la-dec.html</p>
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III. BENEFITS

You will find below relevant statute and case law concerning benefits of employees subject to French law.

SMIC	<p>As from January 1st, 2022, the minimum monthly gross salary is €1,603.12.</p> <p>https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044546647</p> <p><i>Please note that the CBA applicable to your company contains a chart of minimum salary depending on the employee's grading.</i></p>
Lunch vouchers	<p>Employees may benefit from lunch vouchers which are partly paid by the company.</p> <p>The company's contribution is exempt from social charges as long as:</p> <ul style="list-style-type: none"> ⇒ It ranges between 50% and 60% of the face value of the voucher; ⇒ It does not exceed €5.69 per voucher (value for 2022).
Variable remuneration	<p>The constructive dismissal claim of an employee who justified that they have been deprived of the contractually agreed variable remuneration for several years has merits.</p> <p>The employer cannot argue that the misconduct alleged by the employee was not serious enough to claim constructive dismissal since the lack of payment had been ongoing for several years.</p> <p>Also noteworthy is the specification that the employer must justify that the performance targets set by the employer were achievable.</p> <p>French Supreme Court, 15 December 2021, n°19-20978</p> <p>https://www.courdecassation.fr/decision/61b99381ef20f6a61afc3614?judilibre_chambre[]=soc&previousdecisionpage=0&previousdecisionindex=6&nextdecisionpage=0&nextdecisionindex=8</p>